

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KELSEY VARGAS,
Plaintiff,

v.

NATIONWIDE GENERAL INSURANCE
COMPANY AND JOHN DOE
Defendants.

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CIVIL ACTION NO. 4:17-cv-2973

NOTICE OF REMOVAL

Defendant Nationwide General Insurance Company (“Defendant”), through undersigned counsel and pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, files this Notice of Removal of the lawsuit captioned *Kelsey Vargas v. Nationwide General Insurance Company and John Doe*; Cause No. 17-09-10554, in the County Court at Law No. 2, Montgomery County, Texas.

**I.
BACKGROUND**

1. Plaintiff Kelsey Vargas (hereinafter “Plaintiff”) initiated the present action by filing his Original Petition in Cause No. 17-09-10554, in the County Court at Law No. 2, Montgomery County, Texas on August 31, 2017 (the “State Court Action”). *See* Plaintiff’s Original Petition, attached as **Exhibit A**.

2. Defendant appeared and answered on September 29, 2017, asserting a general denial to the claims and allegations made in Plaintiff’s Original Petition. *See* Defendant’s Original Answer, attached as **Exhibit B**.

3. Pursuant to 28 USC § 1446(a) all a copy of all process, pleadings, and orders served upon Defendants in the State Court Action are incorporated in **Exhibit A**. Pursuant to Local Rule 81, a fully copy of the state court file has been requested and will be filed upon receipt.

4. Pursuant to 28 U.S.C. § 1446(d), promptly after filing this Notice of Removal, Defendant will give written notice of the removal to Plaintiff through her attorney of record, and to the clerk of the County Court at Law No. 2, Montgomery County, Texas.

5. Pursuant to 28 USC §§ 1446(b)(1) and 1446(c)(1) this Notice of Removal has been timely filed within 30 days of service on Defendant of Plaintiff's Original Petition and less than one year after the commencement of this action.

II. JURISDICTION

6. This Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and the matter is removable to this Court pursuant to 28 U.S.C. § 1441(a) because there is complete diversity of citizenship between the properly joined parties and the amount in controversy exceeds \$75,000 exclusive of interest and costs.

A. Diversity of Parties

7. Plaintiff is domiciled in Montgomery County, Texas. Pursuant to 28 U.S.C. § 1332(a), therefore, Plaintiff is a citizen of the State of Texas.

8. Nationwide General Insurance Company is organized under the laws of Ohio and maintains its principal place of business in Columbus, Ohio. Pursuant to 28 U.S.C. § 1332(c)(1), therefore, Nationwide is a citizen of the State of Ohio.

9. Plaintiff has pled that John Doe is an adjuster assigned to this claim by Nationwide and believed to be an individual residing in the state of Texas. The federal removal statute is clear that "[i]n determining whether a civil action is removable on the basis of the jurisdiction under section 1332(a) of this title, the citizenship of defendants sued under fictitious names shall be disregarded." 28 U.S.C. § 1441(b)(1).

10. Accordingly, there is complete diversity between the parties pursuant to 28 U.S.C. § 1332(a).

B. Amount in Controversy

11. Plaintiff's Original Petition states that Plaintiff seeks monetary relief "over \$100,000.00 but not more than \$200,000.00." *See* Plaintiff's Original Petition, **Exhibit A**, ¶ 58. The threshold for diversity jurisdiction, \$75,000, is therefore met by the allegations of Plaintiff's Original Petition.

12. Plaintiff further seeks compensation for (1) actual damages, (2) treble damages, (3) 18% penalty interest attorney's fees, (4) mental anguish damages, (5) pre and post-judgment interest, and (6) attorney's fees. *See Exhibit A*. Plaintiff has alleged that Defendant's conduct was wrongful and done knowingly, entitling her to a trebling of actual damages under Texas Insurance Code Chapter 541. *See Exhibit A*, ¶ 50; Tex. Ins. Code sections 541.002 & 541.152. Penalties, exemplary damages, and attorneys' fees are included as part of the amount in controversy.¹

13. The amount in controversy plainly exceeds \$75,000, exclusive of interest and costs. *See Exhibit A*. Accordingly, the amount in controversy requirement of 28 U.S.C. § 1332(b) is satisfied.

**III.
CONCLUSION**

14. Removal of this action under 28 U.S.C. § 1441(a) is proper as the district courts of the United States have original jurisdiction over the matter pursuant to 28 U.S.C. § 1332, and as all requirements for removal under 28 U.S.C. § 1446 have been met.

¹ *See H&D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 330 (5th Cir. 2000); *see also St. Paul Reinsurance Co. v. Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998).

15. WHEREFORE, Defendant Nationwide General Insurance Company hereby provides notice that this action is duly removed.

Respectfully submitted,

/s/ Patrick M. Kemp

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served upon the following counsel of record via certified mail, return receipt requested on this 4th day of October, 2017.

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/s/ Patrick M. Kemp

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